

**AMENDMENT NO. 1
TO THE
COOPERATIVE AGREEMENT BETWEEN THE CITY OF
TEMECULA AND THE COUNTY OF RIVERSIDE TO
MITIGATE TRAFFIC IMPACTS IN WESTERN
RIVERSIDE COUNTY**

This Amendment is made and entered into as of November 14, 2007⁶ by and between the City of Temecula, a municipal corporation ("City"), and the County of Riverside ("County"), a public subdivision of the State of California ("County").

ARTICLE 1

RECITALS

This Agreement is made for the following purposes and with respect to the following facts, which the City and County agree to be true and correct:

On April 12, 2005, the City and the County of Riverside entered an agreement entitled: "COOPERATIVE AGREEMENT BETWEEN THE CITY OF TEMECULA AND THE COUNTY OF RIVERSIDE TO MITIGATE TRAFFIC IMPACTS IN WESTERN RIVERSIDE COUNTY" ("COOPERATIVE AGREEMENT").

The COOPERATIVE AGREEMENT calls, among other things, for the City and the County to implement certain measures to mitigate the impact of new housing development on City and County arterial roads and highways within the boundaries of the I-215 Policy Area. ("The Measures").

The Measures call for the County to condition all County Land Use Applications authorizing the construction of residential dwelling units to be part of an appropriately funded financing mechanism (such as a Community Facilities District - CFD) that will build the major arterial road components identified in the COOPERATIVE AGREEMENT.

The County has been imposing conditions of approval that implement the requirements of the COOPERATIVE AGREEMENT.

Now that the City and the County have been implementing the terms of the COOPERATIVE AGREEMENT for over a year, they have identified modifications to the COOPERATIVE AGREEMENT that will facilitate implementation and enhance the timely delivery of transportation infrastructure.

In light of the above, the City and the County hereby wish to amend the COOPERATIVE AGREEMENT as follows:

ARTICLE 2

COOPERATIVE AGREEMENT AMENDMENTS

Section 1. Exhibit A to the COOPERATIVE AGREEMENT, referenced in Section 1.8 thereof, is amended as shown in "Revised Exhibit A", which is attached hereto and incorporated herein by this reference. Revised Exhibit A modifies the boundaries of the original I-215 Policy Area to include the following sub-areas:

- Newport Road/I-215 Interchange CFD – Sub-area A
- Scott Road/I-215 Interchange CFD – Sub-area B
- Clinton Keith Road Extension CFD – Sub-area C
- Washington Street Construction – Sub-area D
- Clinton Keith Road Extension Fee Payment – Sub-area E
- Newport Road Extension CFD – Sub-area F
- Newport Road Realignment CFD – Sub-area G

The County shall use these sub-areas as a guideline in determining how County Land Use Applications should be conditioned.

Section 2. Section 1.9.9 of the COOPERATIVE AGREEMENT is amended to read as follows:

"1.9.9 'County Land Use Applications' is defined in Section 2.3.3 and shall mean any applications on which the County Planning Commission has not taken final action as of the effective date of this Agreement, the approval of which would authorize, or conditionally authorize, the construction of dwelling units within the I-215 Policy Area, including, but not limited to, applications for General Plan amendments, specific plans, specific plan amendments, zone changes, development agreements, subdivision maps and planned development permits. County Land Use Applications shall not include any applications for parcel maps that would result in the creation of four or fewer parcels, provided that the parcels created could not be further subdivided without a General Plan amendment. County Land Use Applications shall also not include any applications for minor changes to approved tentative tract maps that would add only one residential unit to the maps."

Section 3. Section 2.3.3 of the COOPERATIVE AGREEMENT is amended to read as follows:

"2.3.3 As used in this Agreement, County Land Use Applications shall mean any applications on which the County Planning Commission has not taken final action as of the effective date of this Agreement, the approval of which would authorize, or conditionally authorize, the construction of dwelling units within the I-215 Policy Area, including, but not limited to, applications for General Plan amendments, specific plans, specific plan amendments, zone changes, development agreements, subdivision maps and planned development permits. County Land Use Applications shall not include any applications for parcel maps that would result in the creation of four or fewer parcels, provided that the parcels created could not be further subdivided without a General Plan amendment. County Land Use Applications shall also not include any applications for minor changes to approved tentative tract maps that would add only one residential unit to the maps."

Section 4. A new Section 1.9.19 is added to the COOPERATIVE AGREEMENT to read as follows:

“1.9.19 ‘Subdivision map extension application’ shall mean an application to extend the time available to record a final map.”

Section 5. A new Section 1.9.20 is added to the COOPERATIVE AGREEMENT to read as follows:

“1.9.20 ‘TUMF’ shall mean the Transportation Uniform Mitigation Fee adopted by the Western Riverside Council of Governments and its member jurisdictions (including the City and the County), as subsequently amended.”

Section 6. Existing Section 1.9.19 is renumbered Section 1.9.21.

Section 7. A new Section 2.2.1 is added to the COOPERATIVE AGREEMENT to read as follows:

“2.2.1 To facilitate the formation of financing mechanisms, the County has implemented Section 2.2 of the COOPERATIVE AGREEMENT such that subdivision maps are required to comply therewith prior to recordation of a final map. Notwithstanding the County’s implementation procedure, the City and County recognize that certain subdivision maps were tentatively approved prior to adoption of the COOPERATIVE AGREEMENT, but have not recorded for a variety of reasons. Recognizing that substantial time and money have been invested in these maps and that their recordation may be further delayed by the requirements of the COOPERATIVE AGREEMENT as implemented by the County, the County has developed the alternative procedure set forth in Section 2.2.2 that will allow these maps to record while still securing the funding necessary for the needed transportation improvements.”

Section 8. A new Section 2.2.2 is added to the COOPERATIVE AGREEMENT to read as follows:

“2.2.2 In considering a subdivision map extension application for any map tentatively approved prior to the effective date of the COOPERATIVE AGREEMENT (April 12, 2005), the County may, at the request of the subdivider, conditionally approve the application to require the subdivider to pay (a) the applicable TUMF at the earliest date allowed by the TUMF Ordinance and (b) an early recordation fee, which shall be 50% of the TUMF in effect at the time of recordation. The County shall earmark the early recordation fee for use only on the major arterial road that most benefits the subdivision, as determined by the County. This alternative procedure is purely voluntary and any subdivider choosing not to request it shall be subject to all other terms of the COOPERATIVE AGREEMENT as implemented by the County.”

Section 9. Section 5.2 of the COOPERATIVE AGREEMENT is amended to read as follows:

“5.2 The City shall have the right to refile the Litigation, subject to the provisions of Sections 5.2.1 through 5.2.6, inclusive, in the event that: (1) the County

does not, within four (4) months of the effective date of Amendment No. 1 to the COOPERATIVE AGREEMENT, complete the staff work required for the County General Plan Amendment, including necessary environmental documentation, and set a public hearing date before the Planning Commission; (2) the County does not, for any reason, adopt the County General Plan Amendment within eight (8) months of the effective date of Amendment No. 1 to the COOPERATIVE AGREEMENT; or (3) the County does not adopt the jointly developed Freeway Action Plan described in Section 4.4 within one (1) year after completion of the Freeway Strategic Study described in Section 4.2.”

ARTICLE 3

MISCELLANEOUS


The parties hereto represent and warrant to each other that they have full authority to execute this Agreement.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

The effective date of this Agreement is the date the parties sign the Agreement. If the parties sign the Agreement on more than one date, then the last date the Agreement is signed by a party shall be the effective date.

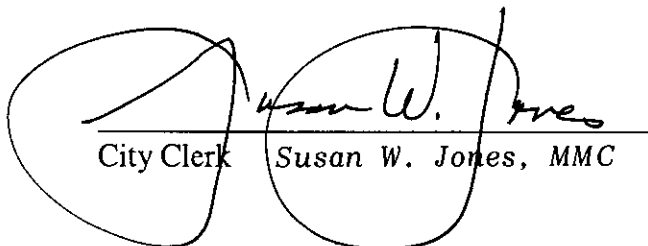
IN WITNESS WHEREOF, the undersigned have executed this Agreement in the State of California.

CITY OF TEMECULA



Mayor *Ron Roberts*

Attest:



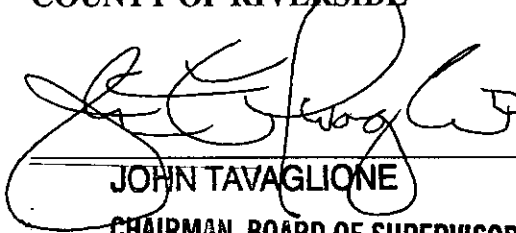
City Clerk *Susan W. Jones, MMC*

Approved as to Form



City Attorney *Peter M. Thorson*

COUNTY OF RIVERSIDE



JOHN TAVAGLIONE

CHAIRMAN, BOARD OF SUPERVISORS

Attest:

Nancy Romero, Clerk of the Board of Supervisors

By: 
Deputy Clerk

Approved as to Form

Joe Rank, County Counsel

By: 

Katherine A. Lind

Principal Deputy County Counsel

REVISED EXHIBIT A

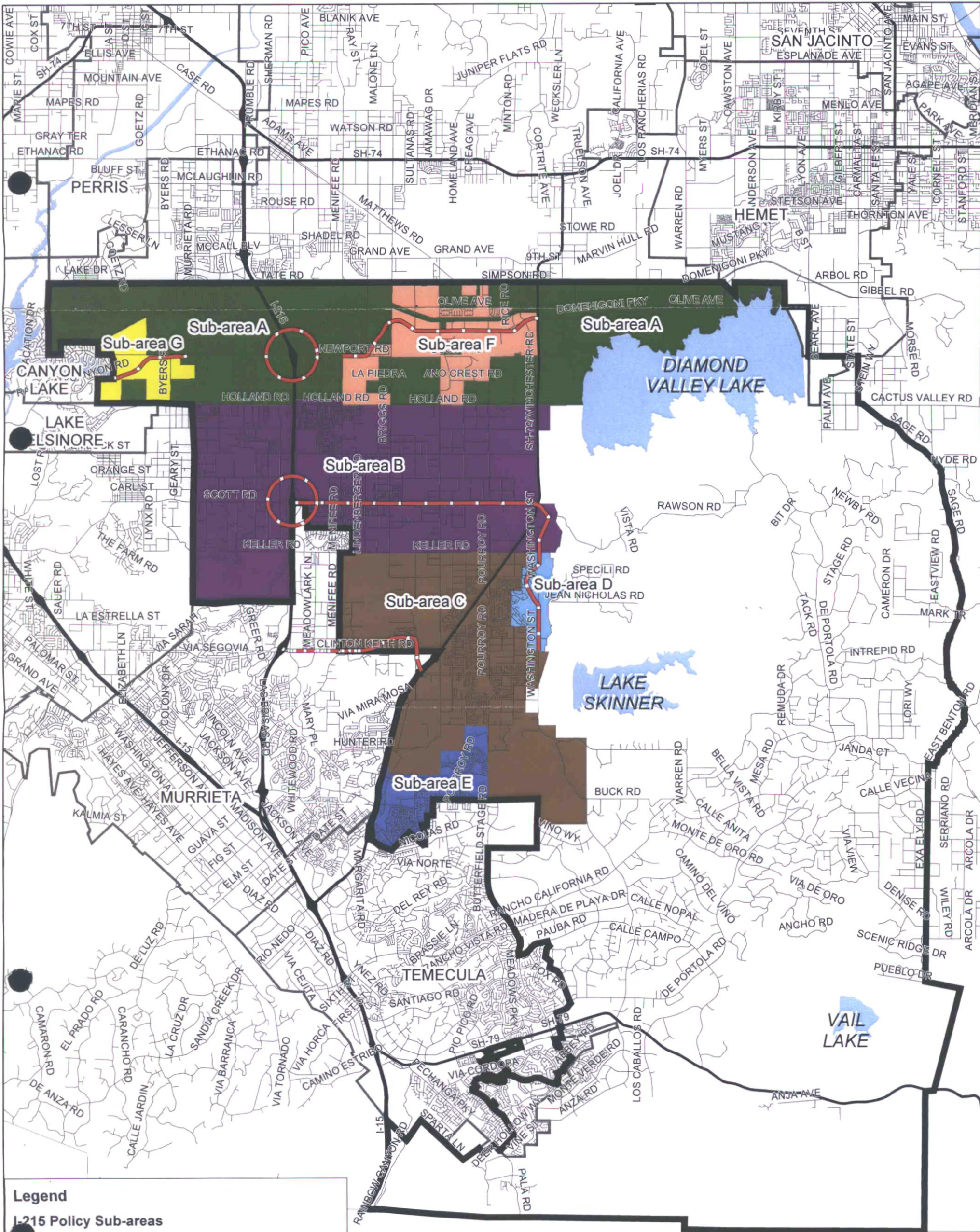
I-215 Policy Area

PRINTED August 3, 2006



The County of Riverside assumes no warranty or legal responsibility for the information contained on this map. Data and information represented on this map is subject to updates, modifications and may not be complete or appropriate for all purposes. County GIS and other sources should be queried for the most current information. Do not copy or reuse this map.

0 2,500 5,000 10,000 Feet
1 inch equals 10,000 feet



Legend

I-215 Policy Sub-areas

- Newport Road/I-215 Interchange - Sub-area A
- Scott Road/I-215 Interchange - Sub-area B
- Clinton Keith Road Extension - Sub-area C
- Washington Street Construction - Sub-area D
- Clinton Keith Road Extension Fee Payment - Sub-area E
- Newport Road Extension - Sub-area F
- Newport Road Realignment - Sub-area G
- I-215 Policy Area
- Road Centerlines
- Cities
- Policy Area Roadway or Interchange

**COOPERATIVE AGREEMENT BETWEEN THE CITY OF
TEMECULA AND THE COUNTY OF RIVERSIDE TO
MITIGATE TRAFFIC IMPACTS IN WESTERN
RIVERSIDE COUNTY**

This Agreement is made and entered into as of April 1^a, 2005 by and between the City of Temecula, a municipal corporation ("City"), and the County of Riverside, a public subdivision of the State of California ("County"). In consideration of the mutual promises set forth herein, the City and County agree as follows:

ARTICLE 1

RECITALS

This Agreement is made for the following purposes and with respect to the following facts, which the City and County agree to be true and correct:

1.1 Since 1999, the County has been engaged in a project known as the Riverside County Integrated Project (the "RCIP"), which initially consisted of proposals for the Community and Environmental Transportation Acceptability Process (the "CETAP"), the Western Riverside County Multi-Species Habitat Conservation Plan ("MSHCP"), and an updated general plan to replace the County general plan adopted in 1984. The CETAP has not yet been adopted. The MSHCP has been adopted by the County and the member agencies. The State and Federal agencies have also approved the MSHCP and issued the necessary permits for the MSHCP.

1.2 On October 7, 2003, the County adopted its Resolution No. 2003-487, approving a new General Plan (the "General Plan") to replace the prior general plan approved in 1984 and adopted Resolution No. 2003-488 adopting and certifying a Final Environmental Impact Report for the General Plan ("FEIR"). The General Plan designates land uses for the unincorporated areas of the County. The General Plan also describes the infrastructure necessary to serve the designated land uses.

1.3 The City is located in southwestern Riverside County. Two major highways traverse the City, State Route 79 North (Winchester Road) and State Route 79 South, and connect to Interstate 15. The City has improved these roads from two lanes to six lanes in order to accommodate the growth within the City. These roads also serve the unincorporated areas of the County surrounding the City.

1.4 During the public hearing process, the City commented extensively on the proposed General Plan. The City contends, among other things, that the General Plan fails to adequately provide for construction of the traffic improvements required to serve the dwelling units proposed by the General Plan and, therefore, fails to mitigate the traffic impacts created by the General Plan; that the General Plan deficiencies are of particular concern to the City because traffic generated in the Southwest area of the County will severely impact the City unless certain

traffic improvements are built concurrently with the proposed dwelling units; and that no adequate mechanism exists in the General Plan to ensure that traffic mitigation measures identified in the General Plan and the FEIR are in place before the dwelling units creating the need for the mitigation measures are constructed. The County disputes the City's contentions.

1.5 On November 5, 2003, the City filed a Petition for Writ of Mandate in Riverside Superior Court challenging the legality and validity of the General Plan and the FEIR. The action is entitled "*City of Temecula v. County of Riverside; Board of Supervisors of the County of Riverside*," Riverside County Superior Court Case No. RIC 402766 ("Litigation"). The County disputes the City's contention that the General Plan and FEIR are invalid.

1.6 Despite their differences in the Litigation, the City and County desire to cooperatively work together in an effort to improve the highway infrastructure in Western Riverside County for the benefit of all current and future residents of the County. The City and County acknowledge that providing adequate traffic infrastructure for Western Riverside County involves complex engineering, environmental and financial challenges requiring the full cooperation of all federal, state and local governmental agencies, but will provide substantial public benefits for the City, County and the people living and working in the City and the County.

1.7 This Agreement sets forth the framework for a major cooperative effort by the City and the County to provide the traffic infrastructure required for new housing development in Western Riverside County before the creation of actual traffic impacts.

1.8 This Agreement specifically addresses impacts of the General Plan on Major Arterial Roads in Southwest Riverside County in the specific area to be known as the "I-215 Policy Area." This Agreement also specifically addresses impacts of the General Plan on freeways in the "Western Riverside County Area". For the purposes of this Agreement, the "I-215 Policy Area" shall be the area described in and shown on Exhibit A and the "Western Riverside County Area" shall be the area described in and shown on Exhibit D.

1.9 The terms described below shall have the following meanings unless otherwise noted in the Agreement:

1.9.1 "Appropriately formed and fully funded financing mechanism" is defined in Section 2.3.4 and Section 3.3.4 and shall mean a community facilities district, assessment district, or similar infrastructure financing mechanism, which has been formed and which is fully funded to provide for the immediate construction of the Major Arterial Roads required to mitigate project-related traffic impacts. "Appropriately formed financing mechanism" is defined in Section 2.3.4 and Section 3.3.4 and shall mean a community facilities district, assessment district, or similar infrastructure financing mechanism, which has been formed to provide for the construction of the Major Arterial Roads required to mitigate project-related traffic impacts.

1.9.2 "Best efforts" County is defined in Section 2.3.2 and Section 2.3.7. As used in Section 2.3.2, "best efforts" shall mean that the County shall initiate proceedings to amend the General Plan as described in Section 2.1 and shall diligently process the proposed

General Plan Amendment to completion in accordance with all applicable laws, subject to the County's legislative discretion as more particularly described in Section 2.3.5. As used in Section 2.3.7, "best efforts" shall mean that the County shall, at the time an appropriately formed financing mechanism is in place and sufficient funds are available, diligently undertake, without unnecessary delay, all the actions required to enable construction of the Major Arterial Roads, including, but not limited to, preparing and processing the required environmental documentation, design documentation and plans and specifications. As used in Section 2.3.7, "best efforts" shall further mean that the County shall, at the time an appropriately formed and fully funded financing mechanism is in place, diligently initiate and complete construction of the Major Arterial Roads.

1.9.3 "Best efforts" City is defined in Section 3.3.2, and shall mean that the City shall initiate proceedings to amend the General Plan as described in Section 3.1 and shall diligently process the proposed General Plan Amendment to completion in accordance with all applicable laws, subject to the City's legislative discretion as more particularly described in Section 3.3.6.

1.9.4 "City" shall mean the City of Temecula.

1.9.5 "City General Plan Amendment" shall mean the proposed amendment to the Temecula General Plan described in Section 3.1.

1.9.6 "City Land Use Applications" is defined in Section 3.3.3 and shall mean any applications on which the City Planning Commission has not taken final action as of the effective date of this Agreement, the approval of which, would authorize or conditionally authorize the construction of dwelling units within the City, including, but not limited to, applications for General Plan amendments, specific plans, specific plan amendments, zone changes, development agreements, subdivision maps and planned development permits.

1.9.7 "County" shall mean the County of Riverside.

1.9.8 "County General Plan Amendment" shall mean the proposed amendment to the Riverside County General Plan described in Section 2.1.

1.9.9 "County Land Use Applications" is defined in Section 2.3.3 and shall mean any applications on which the County Planning Commission has not taken final action as of the effective date of this Agreement, the approval of which, would authorize or conditionally authorize the construction of dwelling units within the I-215 Policy Area, including, but not limited to, applications for General Plan amendments, specific plans, specific plan amendments, zone changes, development agreements, subdivision maps and planned development permits.

1.9.10 "Effective date of this Agreement" shall mean the date described in Section 6.11.

1.9.11 “General Plan” shall mean the Riverside County General Plan approved by Resolution No. 2003-487 of the Board of Supervisors of Riverside County on October 7, 2003.

1.9.12 “Freeways” shall mean the I-15 Freeway and the I-215 Freeway within the Western Riverside County Area.

1.9.13 “Freeway Action Plan” shall mean the action plan described in Section 4.4 which shall be negotiated by the City and County following receipt of the Freeway Strategic Study.

1.9.14 “Freeway Strategic Study” shall mean the study described in Section 4.1 to set specific goals for the development of the freeway capacity necessary to meet the traffic generated by new housing development in the Western Riverside County Area and to establish the framework for the joint efforts of the City, County, and other federal, state and local agencies to implement the goals and establish the necessary freeway capacity.

1.9.15 “I-215 Policy Area” is defined in Section 1.8 and shall mean the area in Southwest Riverside County described in and shown on Exhibit A.

1.9.16 “Litigation” shall mean the Petition for Writ of Mandate filed by the City on November 5, 2003 in Riverside Superior Court, entitled “*City of Temecula v. County of Riverside; Board of Supervisors of the County of Riverside*,” Riverside County Superior Court Case No. RIC 402766, challenging the legality and validity of the General Plan and the FEIR.

1.9.17 “Major Arterial Roads” is defined in Section 2.3.1 and Section 3.3.1 and shall mean those roadway projects identified in Exhibit B.

1.9.18 “Priority Phasing Program” shall mean the program described in Exhibit C.

1.9.19 “Western Riverside County Area” shall mean the area described in and shown on Exhibit D.

ARTICLE 2

MEASURES TO MITIGATE THE IMPACT OF NEW HOUSING DEVELOPMENT ON COUNTY ARTERIAL ROADS AND HIGHWAYS

2.1 The County shall use its best efforts to amend the General Plan so that it contains: (1) a policy indicating that the Major Arterial Roads within the I-215 Policy Area shall be constructed and completed concurrently with the construction of the dwelling units creating the demand for the Major Arterial Roads; and (2) a requirement that all land use applications approved by the County within the I-215 Policy Area (“County Land Use Applications”) shall contain a condition, in addition to all other appropriate conditions, that building permits shall not

be issued until (a) the subject property is part of an appropriately formed and fully funded financing mechanism to build the components of the Major Arterial Roads which will mitigate the traffic impacts of the project or (b) the subject property is part of an appropriately formed financing mechanism to build the components of the Major Arterial Roads which will mitigate the traffic impacts of the project and the property owner pays its full proportionate share of the required improvements to the County in trust for the construction of the Major Arterial Roads which will mitigate the traffic impacts of the project or (c) the County otherwise funds or constructs the required improvements using money from other sources. The General Plan Amendments described in this section shall be known as the "County General Plan Amendment."

2.2 All County Land Use Applications approved by the County after the effective date of this Agreement shall contain a condition of approval requiring that building permits shall not be issued until (a) the subject property is part of an appropriately formed and fully funded financing mechanism to build the components of the Major Arterial Roads which will mitigate the traffic impacts of the project or (b) the subject property is part of an appropriately formed financing mechanism to build the components of the Major Arterial Roads which will mitigate the traffic impacts of the project and the property owner pays his/her/its full proportionate share of the required improvements to the County in trust for the construction of the Major Arterial Roads which will mitigate the traffic impacts of the project or (c) the County otherwise funds or constructs the required improvements using money from other sources.

2.3 The County, to the extent allowed by law, shall facilitate and promote the proceedings necessary to complete processing of the County General Plan Amendment as set forth in Section 2.1 and the County shall diligently process the County General Plan Amendment, including necessary environmental actions without unnecessary delay.

2.3.1 As used in this Agreement, "Major Arterial Roads" shall mean those roadway projects identified in Exhibit B.

2.3.2 As used in Sections 2.1, "best efforts" shall mean that the County shall initiate proceedings to amend the County General Plan as described in Section 2.1 and shall diligently process the proposed Amendment to completion in accordance with all applicable laws, subject to the County's legislative discretion as more particularly described in Section 2.3.5.

2.3.3 As used in this Agreement, County Land Use Applications shall mean any applications on which the County Planning Commission has not taken final action as of the effective date of this Agreement, the approval of which, would authorize or conditionally authorize the construction of dwelling units within the I-215 Policy Area, including, but not limited to, applications for General Plan amendments, specific plans, specific plan amendments, zone changes, development agreements, subdivision maps and planned development permits.

2.3.4 As used in this Agreement, "appropriately formed and fully funded financing mechanism" shall mean a community facilities district, assessment district, or similar infrastructure financing mechanism, which has been formed and which is fully funded to provide

for the immediate construction of the Major Arterial Roads required to mitigate project-related traffic impacts.. As used in this Agreement, "appropriately formed financing mechanism" shall mean a community facilities district, assessment district, or similar infrastructure financing mechanism, which has been formed to provide for the construction of the Major Arterial Roads required to mitigate project-related traffic impacts..

2.3.5 The Parties understand and acknowledge that, in the context of processing the County General Plan Amendment and the County Land Use Applications, the County cannot guarantee the ultimate outcome of any public hearings before the County Planning Commission or the County Board of Supervisors or other public bodies of the County, nor prevent any opposition thereto by members of the public or other agencies affected by or interested in the County General Plan Amendment and the County Land Use Applications. The Parties further understand and acknowledge that land use regulations involve the exercise of the County's police power and, at the time of executing this Agreement, it is settled California law that government may not contract away its right to exercise its police power in the future. Avco Community Developers Inc. v. South Coast Regional Com., 17 Cal.3d 785, 800 (1976); City of Glendale v. Superior Court, 18 Cal.App.4th 1768 (1993). The parties further understand and acknowledge that the approval of the County General Plan Amendment and the County Land Use Applications may be subject to procedural or substantive obligations under the California Environmental Quality Act, the State Planning and Zoning Law, or other laws potentially applicable to such approvals. Nothing in this Agreement is intended to constrain the County's consideration of the County General Plan Amendment and the County Land Use Applications in light of the information obtained or developed pursuant to these laws and the County retains the discretion to approve, conditionally approve, or disapprove the County General Plan Amendment and the County Land Use Applications in light of such information. Subject to the foregoing, the County, to the extent allowed by law, shall facilitate and promote the proceedings necessary to complete processing of the County General Plan Amendment as set forth in this section, and the County shall diligently process the County General Plan Amendment, including all necessary environmental actions without unnecessary delay.

2.3.6 The County shall send to the City a public hearing notice for all County Land Use Applications that require a hearing before the County Planning Commission or the County Board of Supervisors.

2.3.7 The County shall use its best efforts to complete the Major Arterial Roads pursuant to the Priority Phasing Program, attached hereto as Exhibit C. As used in this section, "best efforts" shall mean that County shall, at the time an appropriately formed financing mechanism is in place and sufficient funds are available, diligently undertake, without unnecessary delay, all the actions required to enable construction of the Major Arterial Roads, including, but not limited to, preparing and processing the required environmental documentation, design documentation and plans and specifications. As used in this section "best efforts" shall further mean that the County shall, at the time an appropriately formed and fully funded financing mechanism is in place, diligently initiate and complete construction of the Major Arterial Roads.

ARTICLE 3

MEASURES TO MITIGATE THE IMPACT OF NEW HOUSING DEVELOPMENT ON CITY ARTERIAL ROADS AND HIGHWAYS

3.1 The City shall use its best efforts to amend the City's General Plan so that it contains: (1) a policy indicating that the Major Arterial Roads within the City shall be constructed and completed concurrently with the construction of the dwelling units creating the demand for the Major Arterial Roads; and (2) a requirement that land use applications approved by the City within the City ("City Land Use Applications") shall contain a condition, in addition to all other appropriate conditions, that building permits shall not be issued until (a) the subject property is part of an appropriately formed and fully funded financing mechanism to build the components of the Major Arterial Roads which will mitigate the traffic impacts of the project or (b) the subject property is part of an appropriately formed financing mechanism to build the components of the Major Arterial Roads which will mitigate the traffic impacts of the project and the property owner pays its full proportionate share of the required improvements to the City in trust for the construction of the Major Arterial Roads which will mitigate the traffic impacts of the project or (c) the City otherwise funds or constructs the required improvements using money from other sources. The City General Plan Amendments described in this section shall be known as the "City General Plan Amendment."

3.2 All City Land Use Applications approved by the City after the effective date of this Agreement shall contain a condition of approval which requires that building permits shall not be issued until (a) the subject property is part of an appropriately formed and fully funded financing mechanism to build the components of the Major Arterial Roads which will mitigate the traffic impacts of the project or (b) the subject property is part of an appropriately formed financing mechanism to build the components of the Major Arterial Roads which will mitigate the traffic impacts of the project and the property owner pays his/her/its full proportionate share of the required improvements to the City in trust for the construction of the Major Arterial Roads which will mitigate the traffic impacts of the project or (c) the City otherwise funds or constructs the required improvements using money from other sources.

3.3 The City, to the extent allowed by law, shall facilitate and promote the proceedings necessary to complete processing of the City General Plan Amendment as set forth in Section 3.1, and the City shall diligently process the City General Plan Amendment, including necessary environmental actions without unnecessary delay.

3.3.1 As used in this Agreement, "Major Arterial Roads" shall mean those roadway projects identified in Exhibit B.

3.3.2 As used in Sections 3.1, "best efforts" shall mean that the City shall initiate proceedings to amend the City General Plan as described in Section 3.1 and shall diligently process the proposed Amendment to completion in accordance with all applicable laws, subject to the City's legislative discretion as more particularly described in Section 3.3.5.

3.3.3 As used in this Agreement, City Land Use Applications shall mean any applications on which the City Planning Commission has not taken final action as of the effective date of this Agreement, the approval of which, would authorize or conditionally authorize the construction of dwelling units within the City, including, but not limited to, applications for General Plan amendments, specific plans, specific plan amendments, zone changes, development agreements, subdivision maps and planned development permits.

3.3.4 As used in this Agreement, "appropriately formed and fully funded financing mechanism" shall mean a community facilities district, assessment district, or similar infrastructure financing mechanism, which has been formed and which is fully funded to provide for the immediate construction of the Major Arterial Roads required to mitigate project-related traffic impacts. As used in this Agreement, "appropriately formed financing mechanism" shall mean a community facilities district, assessment district, or similar infrastructure financing mechanism, which has been formed to provide for the construction of the Major Arterial Roads required to mitigate project-related traffic impacts..

3.3.5 The Parties understand and acknowledge that, in the context of processing the City General Plan Amendment and the City Land Use Applications, the City cannot guarantee the ultimate outcome of any public hearings before the City Planning Commission or the City Council or other public bodies of the City, nor prevent any opposition thereto by members of the public or other public agencies affected by or interested in the City General Plan Amendment and the City Land Use Applications. The Parties further understand and acknowledge that land use regulations involve the exercise of the City's police power and, at the time of executing this Agreement, it is settled California law that government may not contract away its right to exercise its police power in the future. Avco Community Developers Inc. v. South Coast Regional Com., 17 Cal.3d 785, 800 (1976); City of Glendale v. Superior Court, 18 Cal.App.4th 1768 (1993). The parties further understand and acknowledge that the approval of the City General Plan Amendment and the City Land Use Applications may be subject to procedural or substantive obligations under the California Environmental Quality Act, the State Planning and Zoning Law, or other laws potentially applicable to such approvals. Nothing in this Agreement is intended to constrain the City's consideration of the City General Plan Amendment and the City Land Use Applications in light of the information obtained or developed pursuant to these laws and the City retains the discretion to approve, conditionally approve, or disapprove the City General Plan Amendment and the City Land Use Applications in light of such information. Subject to the foregoing, the City, to the extent allowed by law, shall facilitate and promote the proceedings necessary to complete processing of the City General Plan Amendment as set forth in this section, and the City shall diligently process the City General Plan Amendment, including all necessary environmental actions without unnecessary delay.

3.3.6 The City shall send to the County a public hearing notice for all City Land Use Applications that require a hearing before the City Planning Commission or the City Council.

ARTICLE 4

MEASURES TO MITIGATE THE IMPACT OF NEW HOUSING DEVELOPMENT ON WESTERN RIVERSIDE COUNTY AREA FREEWAYS

4.1 The City and the County shall jointly request that the Riverside County Transportation Commission ("RCTC") prepare a Freeway Strategic Study for the Western Riverside County Area which shall examine the freeway capacity, set specific goals for the development of the freeway capacity necessary to accommodate the trips generated by new housing development and establish the framework for the joint efforts of the City, County and other federal, state and local agencies to implement the goals and establish the necessary freeway capacity. The Joint Request for the Freeway Strategic Study shall ask that the Freeway Strategic Study be completed within four (4) months of the date of submittal of the Joint Request. The Joint Request shall be submitted to RCTC within thirty (30) days of the effective date of this Agreement. The parties authorize the Mayor of the City and the Chairperson of the Board of Supervisors to execute the Joint Request on behalf of their respective agencies.

4.2 The Freeway Strategic Study shall specifically study and analyze the following issues: (1) the current capacities of the freeways within Western Riverside County Area ("Freeways"); (2) the projected traffic growth projections for the Freeways as of January 1 in the years 2010, 2015, 2020, 2025 and 2030, based upon assumptions concerning the build-out of new housing as described in Exhibit E; (3) the percentage of traffic growth for the Freeways in those years attributable to new housing development in the Western Riverside County Area; (4) the currently proposed improvements for the Freeways; (5) the current funding options for the currently proposed improvements for the Freeways; and (6) the potential funding sources for improvements necessary to meet the projected traffic growth for the Freeways at build-out of the Western Riverside County Area.

4.3 The City and the County shall share equally in the costs incurred by RCTC in preparing the Freeway Strategic Study.

4.3.1 The County shall invoice the City for the City's share of the RCTC costs and the City shall pay such invoice within thirty (30) days of the date the invoice is deemed given under Section 6.7 of this Agreement.

4.3.2 During the course of RCTC's work on the Freeway Strategic Study, the City, the County and RCTC staff shall meet monthly to discuss the progress of the work and to review any additional work which may need to be undertaken by the consultant.

4.4 Following completion of the Freeway Strategic Study, the City and County shall meet and negotiate in good faith to develop a Freeway Action Plan for funding the freeway improvements necessary to meet the expected demand as determined by the Freeway Strategic Study. As part of the development of the Freeway Action Plan, the City and the County shall also form a Freeway Task Force composed of private and public stakeholders to build consensus

and secure participation of other Western Riverside County Area Cities in the Freeway Action Plan. The Freeway Task Force shall specifically include, but shall not be limited to, a representative from each of the following: the City and the County, RCTC, the Western Riverside Council of Governments ("WRCOG"), the development community and the environmental community.

4.5 In the event a third party files litigation concerning the Freeway Strategic Study or the Freeway Action Plan, or any portion thereof, the City and the County shall share equally in the costs of defending the litigation, provided the City's share shall not exceed the maximum sum of one hundred fifty thousand dollars (\$150,000.00).

4.6 Ad hoc subcommittees of the City Council and the County Board of Supervisors, along with their staffs, shall meet monthly to review the progress of the proposed General Plan Amendment (Section 2.1), the conditions of approval for the County and City Land Use Applications (Section 2.2 and Section 3.2) and the Freeway Strategic Study (Section 4.1).

ARTICLE 5

SETTLEMENT OF LITIGATION

5.1 The City shall dismiss without prejudice the Litigation within twenty- five (25) days of the effective date of this Agreement, subject to the City's right to refile the Litigation as provided in this Agreement.

5.2 The City shall have the right to refile the Litigation, subject to the provisions of Sections 5.2.1 through 5.2.6, inclusive, in the event that: (1) the County does not, within three (3) months of the effective date of this Agreement, complete the staff work required for the County General Plan Amendment, including necessary environmental documentation, and set a public hearing date before the Planning Commission; (2) the County does not, for any reason, adopt the County General Plan Amendment within nine (9) months of the effective date of this Agreement; or (3) the County does not adopt the jointly developed Freeway Action Plan described in Section 4.4 within one (1) year after completion of the Freeway Strategic Study described in Section 4.2.

5.2.1 The City's right to refile the Litigation shall expire one (1) year and thirty (30) days after completion of the Freeway Strategic Study. As used in this Agreement, "completion of the Freeway Strategic Study" shall mean the date RCTC transmits the final version of the Freeway Strategic Study to the City Council and the County Board of Supervisors.

5.2.2 In the event the City exercises its right to refile the Litigation, the refiled lawsuit shall not challenge the General Plan except with respect to the analysis of traffic impacts, including mitigation measures associated with such impacts, within the Third Supervisorial District of the County, as that District was configured on the effective date of this Agreement.

5.2.3 The prayer clause in the refiled Litigation shall request relief only with respect to the General Plan as it applies and relates to traffic impacts within the Third

Supervisory District. The prayer clause shall specifically state that the City does not request that the Court set aside the General Plan in its entirety. All pleadings, briefs, arguments and proposed orders filed by the City addressing the scope of relief, including proceedings pursuant to Public Resources Code Section 21168.9, shall be consistent with this provision.

5.2.4 The County specifically agrees that the City shall have the right to refile the Litigation pursuant to the terms of this Agreement notwithstanding the applicable statute of limitations governing legal challenges to the General Plan and agrees to toll the statute of limitations for a legal challenge to the General Plan so as to enable the City to exercise its rights under this Agreement. Pursuant to this Agreement, the County does not toll or waive the defense of the statute of limitations as to any persons, agencies or entities other than the City.

5.2.5 The County further agrees, on behalf of itself and any successors or assigns, that in the event the Litigation is refiled the County will not raise any applicable statute of limitations as a defense to the refiled Litigation and will allow the City to proceed with prosecution of the refiled Litigation subject to the restrictions set forth in this Agreement.

5.2.6 Subject to the restrictions set forth in Section 5.2.2 and Section 5.2.3, nothing herein is intended to, nor shall it be construed to, prohibit the City from challenging a project approved by the County on the grounds that the project fails to comply with the California Environment Quality Act, or other laws.

5.3 If the County adopts the jointly developed Freeway Action Plan, then, and only then, shall Sections 5.3.1 through 5.3.6 become operative. As used in this Agreement, "adopts the jointly developed Freeway Action Plan" shall mean the County adopts a resolution approving the Freeway Action Plan. The County is not required to adopt or otherwise implement the specific measures described in the Freeway Action Plan in order to obtain the benefits conferred by Sections 5.3.1 through 5.3.6.

5.3.1 Within twenty (20) days after the County adopts the jointly developed Freeway Action Plan, the City shall file with the Court a request for dismissal, with prejudice, of the Litigation.

5.3.2 Each party shall bear its own attorney fees and expenses in the Litigation.

5.3.3 In consideration of the promises of the parties specified in this Agreement and the satisfaction of the conditions for settlement, the parties shall fully and forever release, acquit, and discharge each other, their officers, elected officials, attorneys, sureties, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors, successors-in-interest, assigns, and all persons acting by, through, under or in concert with them of and from any and all past, present, or future claims, demands, obligations, actions, causes of action, including those for damages, injunctive or declaratory relief, or for relief by way of writ of mandate, for costs, losses of service, expenses, liability, suits, and compensation of any nature whatsoever, whether based on tort, contract, or other theory of recovery, known or unknown, that they now have, have had, asserted or could have asserted in the Litigation or otherwise relate to the alleged actions or inactions of the County with respect to the Litigation. Nothing contained

herein shall relieve any party hereto of its continuing obligations imposed by law or by the provisions of this Agreement, including, without limitation, the Judgment in the case of *Endangered Habitats League v. County of Riverside (Domenigoni-Barton Properties)*, Riverside County Superior Court Case No. RIC 369801, consolidated with *City of Temecula v. County of Riverside (Domenigoni-Barton Properties)* Riverside County Superior Court Case No. RIC 369989.

5.3.4 The parties hereto acknowledge that they are familiar with Section 1542 of the California Civil Code which provides:

“A general release does not extend to claims which a creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

The parties being aware of the aforesaid code section, each hereby expressly waives any rights they might have hereunder. This release shall not operate to release any claims the parties may later have for the enforcement of the obligations created by this Agreement.

5.3.5 The City warrants and represents to the County that it has not assigned, conveyed or otherwise transferred any of its rights to the claims described in or arising out of the Litigation to any other person, entity, firm or corporation not a party to this Agreement, in any manner, including by way of subrogation or operation of law or otherwise. In the event that any claim, demand or suit is made or instituted against the County because City made an actual assignment or transfer, City agrees to indemnify and hold the County harmless against such claim, and to pay and satisfy any such claim, including necessary expenses of investigation, reasonable attorneys' fees and costs.

5.3.6 The County warrants and represents to the City that the execution and delivery of this Agreement by County will not (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or governmental entity or (ii) conflict with, result in a breach of, or constitute a default under any material agreement or instrument to which the County is a party or by which the County may be bound.

ARTICLE 6

MISCELLANEOUS

6.1 This Agreement contains the complete expression of the whole agreement between the parties hereto, and there are no promises, representations, agreements, warranties or inducements, either expressed verbally or implied, except as are fully set forth herein. This Agreement cannot be enlarged, modified, or changed in any respect except by written agreement between the parties.

6.2 Each and all of the covenants, conditions and restrictions in this Agreement shall

inure to the benefit of and shall be binding upon the parties, their successors-in-interest, agents, representatives, assignees, transferees.

6.3 No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either expressed or implied) is intended nor shall it be construed to confer upon any person or entity, other than the City and the County, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

6.4 In entering into this Agreement, the parties represent that they have relied upon the legal advice of their attorneys, who are the attorneys of their own choice, and that these terms are fully undertaken and voluntarily accepted by them. The parties further represent that they have no question with regard to the legal import of any term, word, phrase, or portion of this Agreement, or the Agreement in its entirety, and accept the terms of this Agreement as written.

6.5 The parties hereto represent and warrant to each other that they have full authority to execute this Agreement.

6.6 The headings employed to identify the provisions contained herein are solely for the convenience of the parties to this Agreement. If any ambiguity appears in either the headings or the provisions attendant thereto, such ambiguity shall not be construed against any party to this Agreement on the grounds that such party drafted this Agreement.

6.7 Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party to this Agreement by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed or to any officer of that party, or, in lieu of personal service, on the third business day following deposit in the United States mail, certified, postage prepaid, addressed to:

County of Riverside
County Administrative Center
4080 Lemon Street
Riverside, California 92501
Attention: Transportation Land Management Agency Director

City of Temecula
Post Office Box 9033
43200 Business Park Drive
Temecula, California 92589-9033
Attention: City Manager

6.8 If any litigation is commenced between the parties to this Agreement concerning the rights and duties of either in relation to this Agreement, the prevailing party shall be entitled to, in addition to any other relief that may be granted in the litigation, reasonable attorneys fees as determined by the court presiding over the dispute.

6.9 The following Exhibits to this Agreement are incorporated herein as though set forth in full:

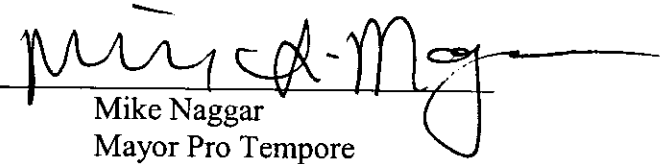
Exhibit A	I-215 Policy Area
Exhibit B	Major Arterial Roads
Exhibit C	Priority Phasing Program
Exhibit D	Western Riverside County Area
Exhibit E	Assumptions of Build-Out of I-215 Policy Area

6.10 This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

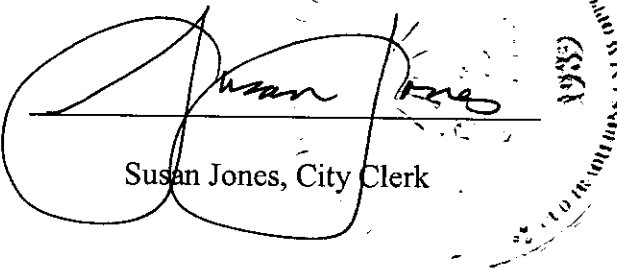
6.11 The effective date of this Agreement is the date the parties sign the Agreement. If the parties sign the Agreement on more than one date, then the last date the Agreement is signed by a party shall be the effective date.

IN WITNESS WHEREOF, the undersigned have executed this Agreement in the State of California.

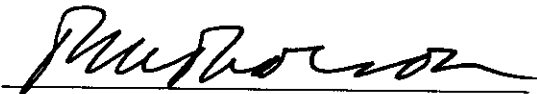
CITY OF TEMECULA


Mike Naggar
Mayor Pro Tempore

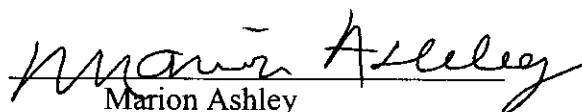
Attest:


Susan Jones, City Clerk


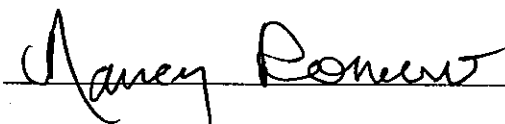
Approved as to Form


Peter M. Thorson
City Attorney

COUNTY OF RIVERSIDE


Marion Ashley
Chairman, Board of Supervisors

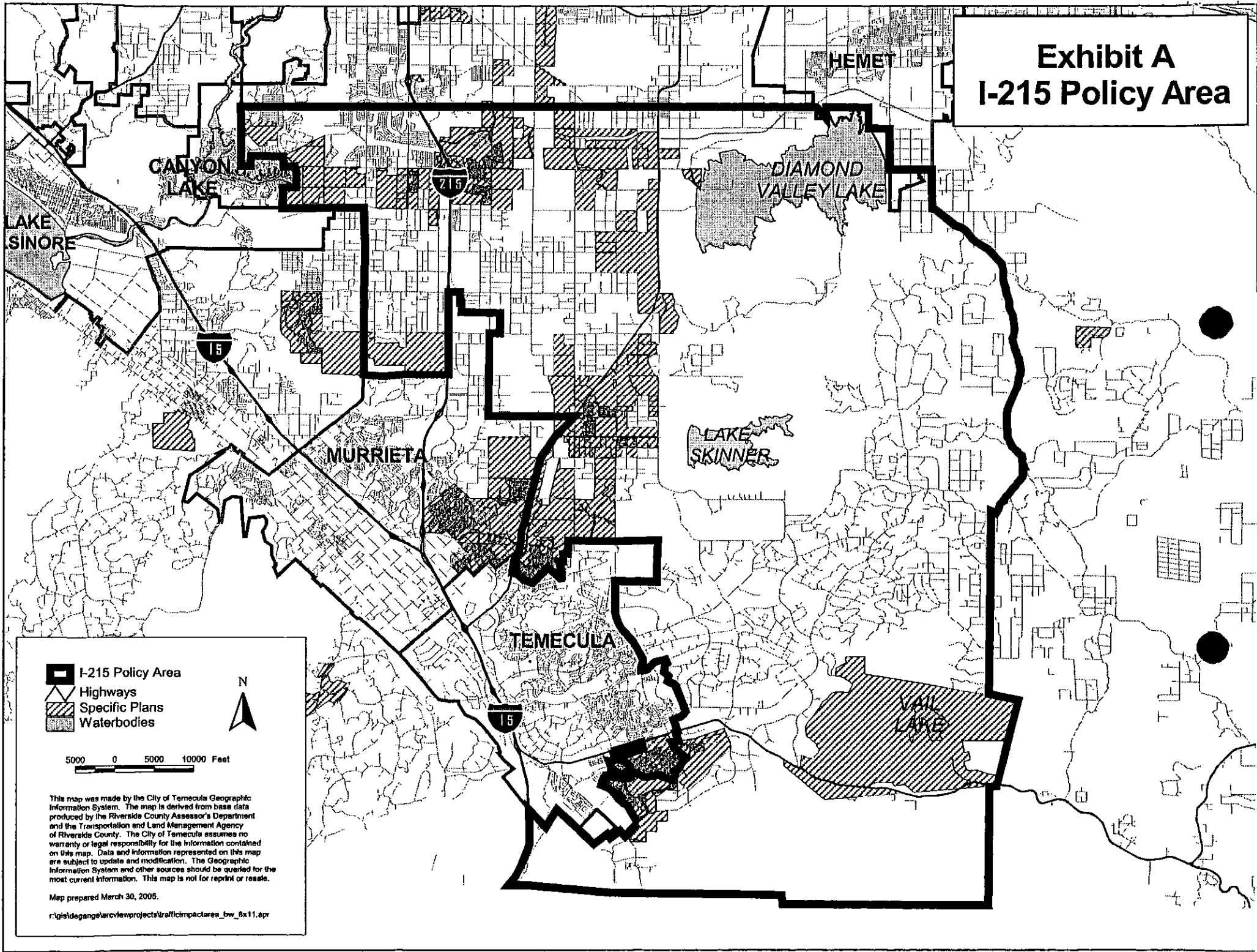
Attest:
Nancy Romero, Clerk to Board of Supervisors


By: 
Deputy Clerk

Approved as to Form
William C. Katzenstein, County Counsel

By: 
Katherine Lind
Deputy County Counsel

Exhibit A I-215 Policy Area



- I-215 Policy Area
- Highways
- Specific Plans
- Waterbodies



5000 0 5000 10000 Feet

This map was made by the City of Temecula Geographic Information System. The map is derived from base data produced by the Riverside County Assessor's Department and the Transportation and Land Management Agency of Riverside County. The City of Temecula assumes no warranty or legal responsibility for the information contained on this map. Data and information represented on this map are subject to update and modification. The Geographic Information System and other sources should be queried for the most current information. This map is not for reprint or resale.

Map prepared March 30, 2005.

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EXHIBIT "B"

MAJOR ARTERIAL ROADS

Newport Road, including Interchange at I-215 and roadway improvements from Goetz Road to Winchester Road (SR 79S).

Scott Road, including Interchange at I-215 and roadway improvements from I-15 to Winchester Road (SR 79N).

Clinton Keith Road, including Interchange at I-15 and roadway improvements from I-15 to Winchester Road (SR 79N).

Winchester Road Phase I, from Murrieta Hot Springs Road to Domenigoni Parkway to 4 lanes.

Winchester Road Phase II, 4 to 6 lanes.

Winchester Road Phase III, 6 to 8 lanes.

Exhibit "C"
Southwest Riverside County Transportation Strategic Plan

Priority	Anticipated Permits 2,000 du's/yr	Estimated Year of Completion	Transportation Improvement	Cost of Improvement (\$Millions)			Funding Sources
				Highway	Interchange	Total	
1		2009	Newport Road , including Interchange at I-215 and roadway improvements from I-215 to Winchester Road (SR 79S).	19.8	14.5	34.3	CFD Formed
			Scott Road , including Interchange at I-215 and roadway improvements from I-15 to Winchester Road (SR 79N).	27.9	14.0	41.9	Proposed CFD
			Clinton Keith Road , including Interchange at I-15 and roadway improvements from I-15 to Winchester Road (SR 79N).	32.6	13.0	45.6	Proposed CFD
			Winchester Road Phase I , from Murrieta Hot Springs Road to Domenigoni Parkway to 4 lanes.	38.6		38.6	Proposed CFD
2		2012	French Valley Interchange at I-15, including 6 lanes from I-15 to Winchester Road (SR 79N).		100.0	100.0	Measure A, TUMF
3		2015	Eastern By-Pass , construct 4 lanes to a new interchange on the I-15 south of SR 79S.	111.2	29.0	140.2	TUMF, Measure A, CFD Proposed
4		2012	Freeway Widening Phase IA , I-215, 4 to 6 lanes, CETAP Corridor		250	<u>250</u>	Measure A, State, FED
5		2016	Winchester Road Phase II , 4 to 6 lanes.	70		70	Measure A, TUMF
6		2025	Winchester Road Phase III , 6 to 8 lanes.	100		100	Measure A, TUMF
7		2020	Freeway Widening Phase IB , I-15, 8 to 10 lanes	200		200	Measure A, State, FED
8		2025	Freeway Widening Phase II , I-215 from 6 to 8 lanes, I-15, from 10 to 12 lanes	400		400	Measure A, State, FED
9		2030	Freeway Widening Phase III , I-215 from 8 to 10 lanes, I-15, from 12 to 14 lanes	TBD			

Note: The Freeway Widening Projects will be refined with the completion of the Freeway Strategic Study and Implementation Plan

Exhibit "D"

Western Riverside County Area

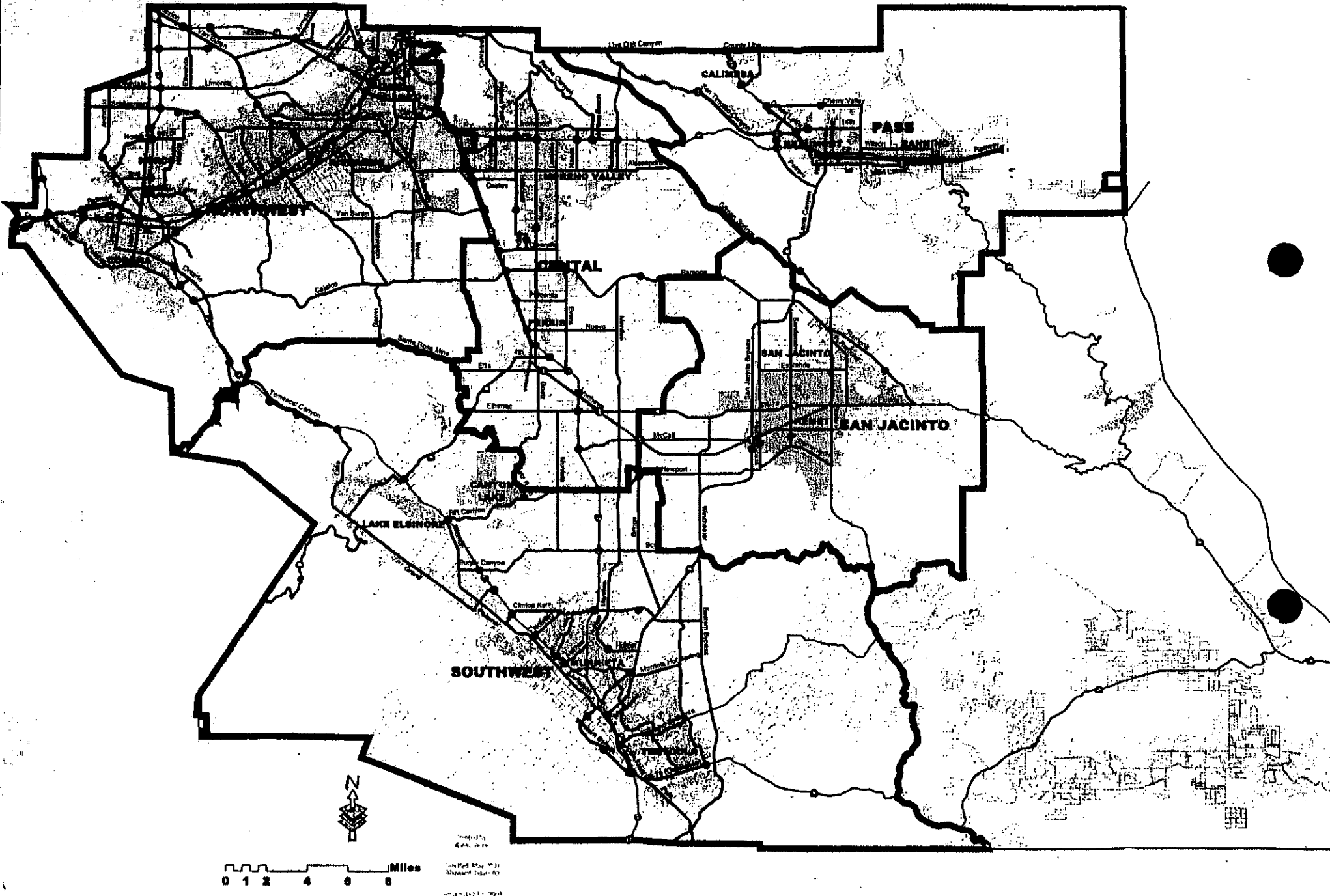


Exhibit "E"
Assumptions of Build-out of I-215 Policy Area

Dwelling Units	Study Area Outside CFDs	CFDs	Total (County Study Area)
Areas in Acres	78,314 (72% of Area)	31,003 (28% of Area)	109,317
Build-Out	72,066 (64% of Units)	39,934 (36% of Units)	112,000
Built Units (Includes un-Built Recorded and Large Lots for CFDs)	19,929 (71% of Built Units)	8,185 (29% of Built Units)	28,114
Units Remaining to be Built	52,137 (62% of Remaining Units)	31,749 (38% of Remaining Units)	83,886

County unincorporated area